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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/370,659	08/06/1999	MASAKAZU HIGUMA	P/16-223	8331

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EXAMINER

MULCAHY, JOHN M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 04/22/2002

141

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/370,659

Applicant(s)

HIGUMA ET AL.

Examiner

John M. Mulcahy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-26 is/are pending in the application.
- 4a) Of the above claim(s) 10-12, 16-20 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-9, 13-15, 21 and 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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Election/Restriction

1. Claims 10-12, 16-20 and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claim 2, "said airtight partition members" lacks antecedent.

b. In claim 4, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

c. The meaning of the limitation in lines 5–7 of claim 21 is simply not understood by the Examiner in the context of the disclosed structure. Inasmuch as the metes and bounds of this claim could only be guessed at, it has not been further treated on its merits. In re Steele, 305 F.2d 858, 134 USPQ 292 (CCPA 1962).

Claim Rejections - 35 USC § 103

3. Claims 5, 6, 23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogiyu (JP 62-40413) in view of Ueda (JP 59-129050) as set forth in section 3(a) of the previous office action (Paper No. 11).

4. Claims 2-4 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogiyu (JP 62-40413) in view of Ueda (JP 59-129050) as applied to claim 23 above, further in view of the Examiner's official notice as set forth in section 3(b) of the previous office action (Paper No. 11).

5. Claims 7-9, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogiyu (JP 62-40413) in view of Ueda (JP 59-129050) as applied to claim 6 above, further in view of Akiba et al. (5,894,369) as set forth in section 3(c) of the previous office action (Paper No. 11).

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogiyu (JP 62-40413) in view of Ueda (JP 59-129050) and Akiba et al. (5,894,369) as applied to claim 13 above, further in view of the Examiner's official notice as set forth in section 3(d) of the previous office action (Paper No. 11).

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Response to Arguments

7. Applicant argues that the term "hindered" in claim 26 is used in its ordinary sense and therefore clear. On reconsideration, this is agreed to and the previous rejection is withdrawn.

8. Applicant argues that the limitation, "when a second optical member is united with said optical path surface of said optical member, said second optical member is not engaged with said frame member" in claim 21 is also clear. However, the limitation is conditional and the reference to "optical path surface" is unclear.

9. Applicant argues that the references relied upon fail to teach certain limitations of claim 1. However, in the preliminary amendment of March 21, 2001, claim 1 was canceled and claim 23 substituted as the only independent claim. See page 9. Inasmuch as claim 23 contains none of the limitations relied upon in Applicant's arguments, such arguments are irrelevant.

Final Rejection

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

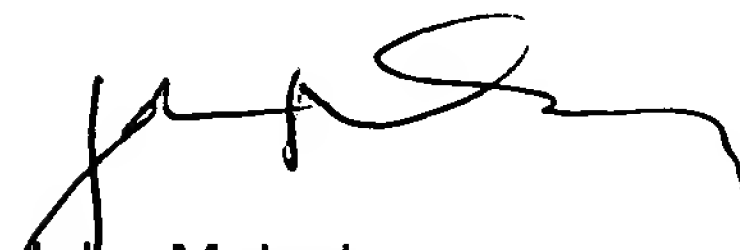
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. Mulcahy whose telephone number is (703) 308-3134. The examiner can normally be reached on M-F, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. M. Dvorak can be reached on (703) 308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3591 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0873.



John Mulcahy
April 15, 2002

John M. Mulcahy
Primary Examiner
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